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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,686	04/09/2004	Douglas D. Fuller	DF001-US	1370
24222	7590	11/03/2004	EXAMINER	
MAINE & ASMUS 100 MAIN STREET P O BOX 3445 NASHUA, NH 03061-3445			NGUYEN, TUAN N	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 11/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/821,686	<b>Applicant(s)</b> FULLER, DOUGLAS D.	
	<b>Examiner</b> Tuan N. Nguyen	<b>Art Unit</b> 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 4,8,9,14,18,20,22 and 27-30 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7,10-13,15-17,19,21 and 23-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/9/04</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of the Species (I): Figs. 1a-d in the reply filed on 8/16/04 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). Accordingly, claims 4, 8, 9, 14, 18, 20, 22 and 27-30 which are directed to the non-elected are withdrawn from further consideration.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "plurality of pores" in line 3 of claims 1 and 11 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering

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of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 19, 21 and 23-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 19, it is unclear as to what structure is being claimed by the limitation "porous qualities of the housing" in line 3 of claim 19.

With respect to claim 21, it is unclear as to what structure is being claimed by the limitation "porous qualities of the housing" in line 3 of claim 21.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 11, 12, 17 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Miessner.

In regard to claim 11, Miessner discloses a hand-held self-dispensing applicator device comprising a housing (4) having an outer surface and an internal reservoir for holding dispensable product, wherein a plurality of pores (see Fig. 1, about 29) fluidly couple the internal reservoir and the outer surface of the housing; and a pressure inducing mechanism (8-11) adapted to provide a positive pressure in the internal reservoir which causes the product in the internal reservoir to flow through the plurality of pores to the outer surface of the housing.

In regard to claim 12, the pressure inducing mechanism includes a pump chamber and plunger arrangement.

In regard to claim 17, the Miessner pressure inducing mechanism is activated by a user.

In regard to claim 19, Miessner discloses a hand-held self-dispensing applicator device comprising a housing (4) having an outer surface and an internal reservoir for holding dispensable product, wherein (as best understood) porous qualities of the housing fluidly couple the internal reservoir and the outer surface; and a bladder (7)

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within the internal reservoir, configured to provide a positive pressure in the internal reservoir, which causes the product in the internal reservoir to flow to the outer surface of the housing.

6. Claims 11-13, 15-17, 21 and 23-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Hancy.

In regard to claims 11, 12 and 21, Hancy discloses a hand-held self-dispensing applicator device (Fig. 4) comprising a housing (16, 21, 22) having an outer surface (formed by the surface of member 22) and an internal reservoir (17) for holding dispensable product, wherein a plurality of pores (formed by mesh screens 21 and 22) capable of being fluidly couple the internal reservoir and the outer surface of the housing; and a pressure inducing mechanism (25) is capable of providing a positive pressure in the internal reservoir which causes the product in the internal reservoir to flow through the plurality of pores to the outer surface of the housing for a period of 10 seconds or more. The pressure inducing mechanism includes a seal and retention scheme as claimed

In regard to claims 13, 15-16 and 23-26, the Hancy device further comprises a housing jacket (23 or 24) disposed on the outer surface of the housing as claimed.

In regard to claim 17, the Hancy pressure inducing mechanism is activated by a user.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3, 5-7, 10-13, 15-17, 19, 21 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hancy in view Iversen.

Hancy discloses a hand-held self-dispensing applicator device (Fig. 4) comprising a housing; a pressure inducing mechanism; and a housing jacket as discussed above. The bellow pressure inducing mechanism of Hancy is one type pressure inducing mechanism without a bladder to increase pressure within a reservoir so as to dispense a product. Attention is directed to Iversen, which discloses hand-held self-dispensing applicator device having a pressure inducing mechanism of another type that includes a bladder (c) and a pump chamber and plunger arrangement (d) for increasing the pressure within a reservoir so as to dispense a product. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the pressure inducing mechanism of Hancy with the pressure inducing mechanism of another type that includes a bladder (c) and a pump chamber and plunger arrangement (d) as, for example, taught by Iversen, where in so doing would involve mere substitution of one functional equivalent pressure inducing mechanism for another and the selection of any of these known equivalents to increase pressure within a reservoir so as to dispense a product would perform equally well on the Hancy device.

### ***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Byun, Holliday et al., Wikstrom disclose other type of pressure

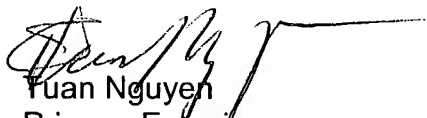
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pumps for dispensing a product. Ross discloses an applicator device with a bladder within a reservoir.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 703-306-9046. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on 703-308-2580. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Tuan Nguyen  
Primary Examiner  
Art Unit 3751  
11/1/04

TN